

AG Contract No.: KR05-0456TRN
ADOT ECS File No.: JPA 05-033
Project No.: CM-CHM-0(019)A
Project: Arizona Avenue
Section: Chandler Blvd – Chilton Drive
TRACS No.: SS527 01C
Budget Source Item No.: N/A

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF CHANDLER

THIS AGREEMENT is entered into this date July 18, 2005, pursuant to Arizona Revised Statutes § 11-951 through § 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and THE CITY OF CHANDLER, acting by and through its MAYOR and CITY COUNCIL (the "City")

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 and § 28-334 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

3. Congress has authorized appropriations for, but not limited to, the construction of streets and primary, feeder and farm-to-market roads; the replacement of bridges; the elimination of roadside obstacles; and the application of pavement markings.

4. The City has selected such project within the boundary of the City; the survey of the project has been completed; and the plans, estimates and specifications will be prepared and as required, submitted to the State and Federal Highway Administration (FHWA) for its approval.

5. The City in order to obtain Federal Funds for the construction of the project, is willing to provide City funds to match Federal funds in the ratio required or as finally fixed and determined by the City, State and FHWA, including actual construction engineering (CE) and administration costs.

6. The interest of the State for this project is in the acquisition of Federal funds for the use and benefit of the City and is authorized as the designated agent. Funds expended for the project, are authorized by reason of Federal Law and regulations.

NO. 27628
Filed with the Secretary of State
Date Filed: 7/18/05

Janice K. Brewer
Secretary of State

By: [Signature]

7. The work encompassed in this Agreement is for the installation of Fiber Optic Communication System along Arizona Avenue from Chandler Boulevard to Chilton Drive. The estimated costs are as follows:

TRACS No. SS527 02D

*Total Estimated Cost	*\$422,034.00
Estimated Federal Aid Funds @ 94.3%	\$235,750.00
Estimated City Funds @ 5.7%	\$ 14,250.00
Estimated City Funds @ 100%	<u>\$172,034.00</u>
Total Estimated City Funds	\$186,284.00

*(Includes construction, construction engineering administration, and incidentals)

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall:

a. Submit a program to the Federal Highway Administration (FHWA) containing the above-mentioned Project with the recommendation that it be approved for construction.

b. Upon approval by FHWA, receipt of the City's matching funds; and with the aid and consent of the City and the FHWA, the State will proceed to advertise for, receive and open bids subject to the concurrence of FHWA and the City, enter into a contract(s) with a firm(s) to whom the award is made for the construction of the Project. Such Project's to be performed, completed, accepted and paid for in accordance with the requirements of the Project Plans, Special Provisions, and Standard Specifications for Road and Bridge Construction of the Arizona Department of Transportation (ADOT).

c. On behalf of the City, the State will enter into a Project Agreement with FHWA covering the work embraced in said construction contract and request the maximum authorized Federal funds available, including construction engineering and administration costs. Should costs exceed the maximum Federal funds available, it is understood and agreed that the City will be responsible for any overage.

d. Not be obligated to maintain said Project, should the City fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

2. The City shall:

a. Be obligated to incur any expenditure should unforeseen conditions or circumstance increase the cost of said work required by a change in the extent of Scope of Work requested by the City. Such changes require the prior approval of the State.

b. Agree the cost of the analysis and works covered in this Agreement is to be borne by FHWA and the City, each in the proportion prescribed and determined by FHWA.

c. Prior to solicitation of bids, agree to deposit funds with the State in an amount equal to the difference between the total cost of the work provided for in this Agreement and the amount of Federal Aid received.

d. Acquire the necessary rights-of way and hereby certifies that all necessary rights-of-way have been or will be acquired prior to advertisement for bid.

e. Remove from the proposed rights-of-way all obstructions, non-construction related or unauthorized encroachments of whatever nature, either above or below the surface of the roadway within the City's right-of-way and hereby certifies that all obstructions and unauthorized encroachments have been or will be removed therefrom, prior to the start of construction.

f. Not permit or allow any encroachments, except those authorized by permit, franchise or license upon or private use of the right-of-way. In the event of any unauthorized encroachment or improper use, the City shall take all necessary steps to remove or prevent any such encroachment or use.

g. Upon completion of construction, be responsible to provide for, at its own costs and as an annual item in its budget, proper maintenance to the work described in this Agreement.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this Agreement, nor for any resulting construction project. The City assumes full responsibility for the design, plans, specifications, reports and the engineering in connection therewith, and the construction of the improvements contemplated, cost over-runs and construction claims. The City shall require its contractor(s) to name the State as an additional insured in the contractor(s) insurance policies. The City shall also require its contractors to name the State as an additional indemnitee in the City's contracts with its contractor(s). It is understood and agreed that State's participation is confined solely to securing Federal aid; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof shall be solely the liability of the City and that, to the extent permitted by law, the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees of the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation or attorneys' fees.

2. The cost of the construction and construction engineering work covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this Agreement. Therefore, the City agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of federal aid received.

3. The terms, conditions and provisions of this Agreement shall remain in force and effect until completion of said project and related deposits or reimbursement. Further, this Agreement may be canceled at any time prior to the award of the project construction contract, upon thirty-days (30) written notice to the other party. It is understood and agreed that, in the event this Agreement is terminated by the City, the State shall in no way be obligated to maintain said project.

4. This Agreement shall become effective upon filing with the Secretary of State.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

6. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

7. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds. Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

10. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue Mail Drop 616E
Phoenix, AZ 85007
FAX: (602) 712 7424

City of Chandler
Attn: Brian Scifers
P.O. Box 4008, Mail Stop 402
Chandler, AZ 85224-3455
(602) 782-3455

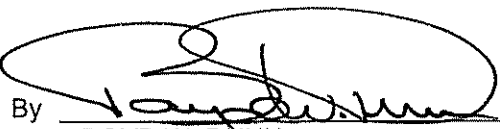
11. Pursuant to Arizona Revised Statutes § 11-952, (D), attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY OF CHANDLER

STATE OF ARIZONA

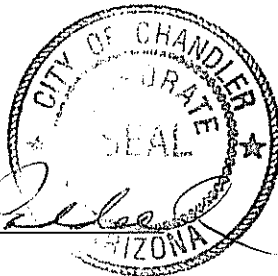
Department of Transportation

By 
BOYD W. DUNN
Mayor

By 
DALE BUSKIRK
Division Director

ATTEST


By 
MARLA PADDOCK
City Clerk



APPROVAL OF THE CITY OF CHANDLER ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF CHANDLER and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 27th day of June, 2005.



Attorney

RESOLUTION NO. 3872

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT (IGA) WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION (ADOT) FOR THE INSTALLATION OF FIBER OPTIC COMMUNICATIONS SYSTEM ALONG ARIZONA AVENUE, FROM CHANDLER BOULEVARD TO CHILTON DRIVE

WHEREAS, the City of Chandler desires to install fiber optics communications along Arizona Avenue, from Chilton Drive to Chandler Boulevard ("the project"); and,

WHEREAS, the City has obtained a Congestion Mitigation and Air Quality for the project in the amount of \$235,750; and,

WHEREAS, the Arizona Department of Transportation is the administrator of Congestion Mitigation and Air Quality grants for the region; and,

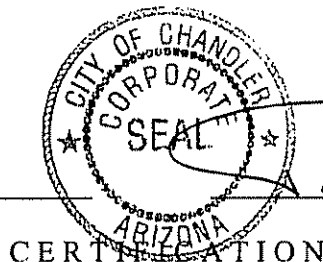
WHEREAS, an IGA is required by the City and ADOT to specify the responsibilities between the parties for the project;

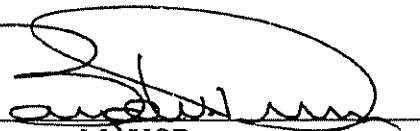
NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Chandler, Arizona, that the Mayor be authorized to sign and execute said Intergovernmental Agreement on behalf of the City of Chandler.

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona, this 23rd day of June 2005.

ATTEST:


CITY CLERK



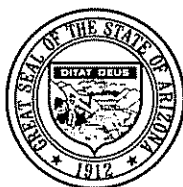

MAYOR

I HEREBY CERTIFY that the above and foregoing Resolution No. 3872 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the 23rd day of June 2005 and that a quorum was present thereat.


CITY CLERK

APPROVED AS TO FORM:


CITY ATTORNEY



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8855

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR05-0456TRN (**JPA 05-033**), an Agreement between public agencies, i.e., *The State of Arizona* and *The City of Chandler*, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: July 13, 2005

TERRY GODDARD
Attorney General

A handwritten signature in cursive script, reading "Susan Davis", written over a horizontal line.

Susan E. Davis
Assistant Attorney General
Transportation Section

SED:mjf
Attachment
913955